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SUBDIVISION CONTROL IN REGISTERED PLANS:

DEEMING AND PART LOT CONTROL



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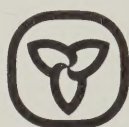
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SUBDIVISION CONTROL IN REGISTERED PLANS:

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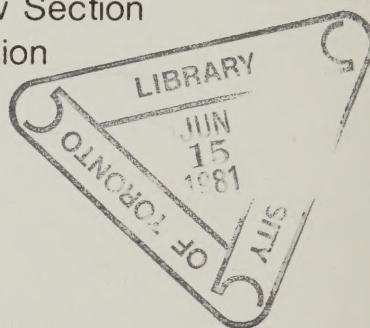
May 1981

Prepared by Operations Review Section
Plans Administration Division



Ontario

Ministry of
Housing



Hon. Claude Bennett, Minister
R.M. Dillon, Deputy Minister


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1. INTRODUCTION

Various provisions of the Planning Act apply to control the subdivision and sale of land in Ontario. In order to sell a portion of a property, a landowner must either apply for consent to sever off that portion under section 29 of The Planning Act or he must apply for approval of a plan of subdivision under section 33 of The Planning Act.* Once a property has been subdivided by means of a registered plan of subdivision, any full lot or block of land in that subdivision can be sold without further approvals. The Planning Act, however, does contain two types of provisions which provide special control over transactions within registered plans. These are referred to as deeming and part lot control.

Municipalities can pass deeming by-laws under section 29(3) of The Planning Act to declare a specified plan of subdivision which has been registered for eight years or more not to be registered for sale purposes. Such a by-law would have the effect of preventing the sale of any lot by an individual owning abutting lots in the subdivision without consent or a new plan of subdivision. Deeming by-laws are primarily used to stop sales in old plans of subdivision where a large number of lots remain in one ownership and where the municipality is not satisfied with some aspect of that subdivision.

Part lot control is established in section 29(4) of The Planning Act and applies throughout Ontario to prevent the conveyance of portions of full lots in registered plans without consent. However, section 29(5) of The Planning Act provides for the removal of this part lot control by municipal by-law. Such removal would permit transactions or changes to a plan of subdivision without requiring the more elaborate consent approvals process.

This document describes the circumstances where it may be appropriate for a municipality to pass a by-law to remove part lot control or to deem a plan of subdivision not to be registered for sale purposes. In addition, some points about the necessary by-laws are clarified.

*See Ministry of Housing publications:
Procedural Guidelines on Consent and Subdivision/Condominium
Approval Procedures: A Guide for Applicants

2. DEEMING

2.1 What Kinds of Subdivisions can be Deemed?

Under section 29(3) of The Planning Act, deeming by-laws may be passed by municipalities to declare all or part of a plan of subdivision not to be registered for sale purposes provided that the plan has been registered for eight years or more and is a registered plan within the meaning of The Planning Act. The Minister of Housing also has this authority under section 32(1) (b) of the Planning Act. In unorganized territories, therefore, old registered plans can be deemed by minister's order.

A registered plan within the meaning of The Planning Act includes plans approved in accordance with section 33 of The Planning Act or a predecessor. It would also include all plans which were registered to create new lots at the instance of a municipality, a land registrar, a judge or an inspector of legal offices. Most of these plans were registered before the introduction of the first Planning Act in 1946. It would not include the various compiled plans which may have been registered to describe existing lot lines in order to clear up the title of long established uses. See Appendix A for a detailed description of the different kinds of registered plans.

2.2 What is the Effect of Deeming?

A by-law to deem a plan of subdivision not to be registered does not have the effect of wiping out or expunging the plan but rather prevents the sale of abutting lots which are in the same ownership. If the deeming by-law were subsequently repealed, the plan of subdivision would regain the status of being a registered plan within the meaning of The Planning Act and individual lots could again be sold. A deeming by-law applies to a specific plan of subdivision. Consequently, such a by-law would not have to be repealed in order to register a new plan of subdivision on the same land.

It should also be noted that a deeming by-law would not affect an individual who owns a single lot on a registered plan since, under the terms of The Planning Act, an owner can sell all of his land at any time. In fact, it is recommended that a deeming by-law omit reference to single lots already in separate ownership since the by-law would not affect transactions on those lots but might cause unnecessary alarm and misunderstanding.

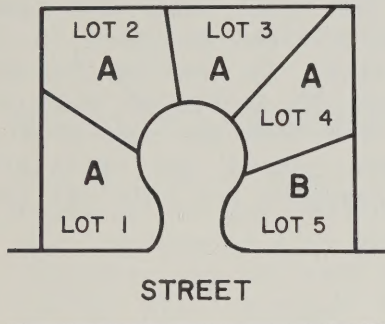


FIGURE 1

In figure 1, a deeming by-law would not affect owner B who could sell his entire holding at anytime. Owner A, however, would be prevented from selling any individual lot while the deeming by-law was in place.

2.3 What are the Reasons for Deeming?

There are many reasons why a municipality may wish to prevent the sale of land according to an old plan of subdivision. They include the following:

(i) Inconsistency with Land Use Policies

A plan of subdivision registered many years ago but not developed may not be consistent with present land use policies. For example, a plan may have been registered in what, at the time, was intended to be a hamlet, but which has subsequently either physically disappeared or was never developed. The present official plan may now designate such an area for rural uses. By passing a deeming by-law, land transactions without further approval are prevented and development which would be contrary to established policies is halted.

(ii) Poor Subdivision Design

Similarly, an old plan of subdivision may not satisfy current standards in subdivision design. A municipality may have updated requirements for such elements as lot size, setbacks or orientation to the road (e.g., reverse lot frontages). It may also have adopted policies related to specific municipal goals such as energy efficient subdivision design. In such a situation, the subdivision may be deemed not to be registered and the owners notified that a new plan of subdivision under section 33 of The Planning Act is required reflecting present day standards and design.

(iii) Inadequate Servicing

Inadequate servicing is another common reason for preventing development in an old registered plan. Road access to the subdivision or to individual lots may be unsatisfactory because of new road alignments or connections with adjacent development.

Similarly, improvements or changes to the local water and sewer services may mean that the servicing provisions proposed in the old subdivisions are no longer appropriate. By deeming the plan not to be registered, negotiations can be initiated with the owner to upgrade the services. When the work is completed or when a satisfactory agreement has been signed and registered against title, then the by-law can be repealed and lots may then be sold.

2.4 What are the Procedures for Deeming?

A deeming by-law must be:

- (i) passed by municipal council (section 29(3)); and
- (ii) registered against title in the appropriate registry or land titles office (section 29(10)).

Section 29(11) requires that notice be given by registered mail to the owners of the property concerned within 30 days of the passing of the by-law. Council is required to hear any person who receives notice and notifies the municipal clerk within 15 days that he wants to make a representation (section 29(11a)).

Section 29(8) requires that a certified copy of the by-law be lodged with the minister. Ministerial approval is not required when enacting a deeming by-law nor is approval required when repealing part or all of a deeming by-law. A sample deeming by-law is included in Appendix B.

3. PART LOT CONTROL

3.1 What is Part Lot Control?

Once a plan of subdivision has been approved under section 33 of The Planning Act and registered, a landowner may sell any complete lot on that registered plan even though he may own abutting lots. However, a landowner may not sell a part or piece of his lot or block on a registered plan without further consent under section 29(4) of The Planning Act. This is referred to as part lot control and has the effect of preventing any division of land in a registered plan, other than that allowed for in the approved plan of subdivision without further approvals.

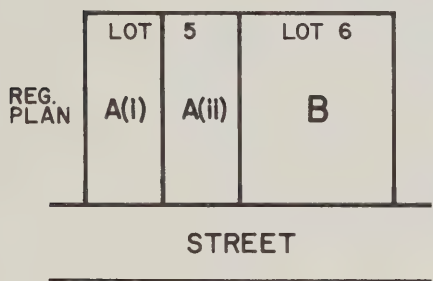


FIGURE 2

Part lot control prevents the sale of part of lot A. In order to split off A(i), approval is required since the vendor (owner A) would retain abutting property in the form of A(ii), the remainder of the lot. (Note that section 29(5a) of The Planning Act prevents simultaneous conveyances.)

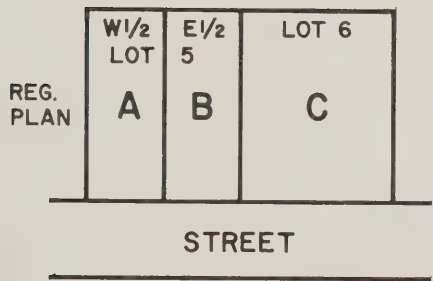


FIGURE 3

There are many situations where a whole lot on a registered plan has already been legally severed into parts. Under the legislation, the present legal owners of such separate parts are entitled to sell their complete holdings even though only parts of lots are involved because the vendors would not retain any abutting land.

3.2 What are the Effects of Removing Part Lot Control?

Section 29(5) of The Planning Act enables a municipality to pass a bylaw to remove part lot control from all or part of a registered plan of subdivision. Such a by-law would have the effect of allowing the conveyance of a portion of a lot without requiring the approval of a committee of adjustment or land division committee. In other words, by lifting part lot control, certain desirable transactions or changes to a plan of subdivision can be allowed to occur expeditiously. Part lot control can be removed only from plans of subdivision which are registered plans within the meaning of The Planning Act. See Appendix A for an explanation of the different kinds of registered plans.

3.3 What are the Reasons for Removing Part Lot Control?

In general terms, the removal of part lot control is appropriate when a number of transactions are involved but the resulting changes to the subdivision would not affect the nature or character of the subdivision itself. If only one lot or transaction were involved, it would be more appropriate to seek consent from the local committee of adjustment or land division committee. If major changes such as the creation of a new road were contemplated, a new plan of subdivision should be prepared, thereby providing for a more thorough review process. The following are examples of situations where a by-law to remove part lot control would be considered appropriate.

(i) Minor Changes to Lots or Blocks in a Registered Plan

In some cases, it may be appropriate to remove part lot control to permit the minor redesign of a plan of subdivision. Any redesign allowed under this procedure should not alter the nature or character of the neighbourhood but should be intended to improve the marketability or convenience of the subdivision. In this context, the zoning on the property would continue to control the type of development permitted. As an example, it may be that current market demand is for somewhat smaller lots than what were registered in the original plan. In addition, it may be desirable to create a walkway that would provide direct pedestrian access from the subdivision to a transit stop or to a local retail area. By removing part lot control, a redesign of a portion of the subdivision may be completed without the extensive review required for a new plan of subdivision, provided that servicing and zoning standards can be met.

Another example of an appropriate type of redesign that can be permitted through the removal of part lot control is in industrial plans of subdivision. Often in such plans, large blocks of land are registered before any industries have bought land in the subdivision. Since industries have different land use requirements, it is common to find that the proposed lotting does not meet their specific requirements. Approval of some lot changes may be obtained through a land division committee or a committee of adjustment. It may, however, be more appropriate for the municipality to remove part lot control from all or part of the industrial subdivision provided that all services are in or a subdivision agreement has been signed to secure them and the zoning regulations have been approved. After the transactions have taken place and the deeds registered, the by-law removing part lot control may be repealed.

(ii) Sale of Part Lots Created Through Road Widening

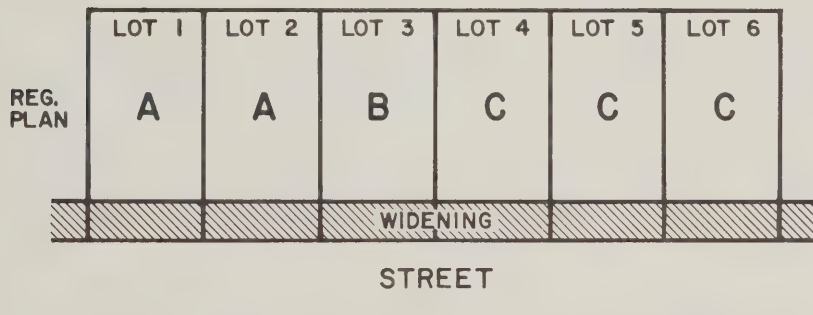


FIGURE 4

The taking of land for a road widening from the fronts of lots in a registered plan of subdivision has the effect of turning the formerly full lots into parts of lots. As a result, a landowner owning abutting lots (owners A and C in the above drawing) would not be able to sell an individual lot without further approval. Owner B, on the other hand, could sell his part of Lot 3 without approval since he owns no abutting land.

In order to permit the sale of Lots 1, 2, 4, 5 and 6 without consent, the municipality could pass a by-law to remove part lot control. The by-law need not apply to Lot 3 since it is in separate ownership. The by-law could be repealed once all lots were in separate ownership, thereby preventing further subdivision of the lots without approval.

(iii) Creation of Individual Lots for
Semi-detached and Row Houses

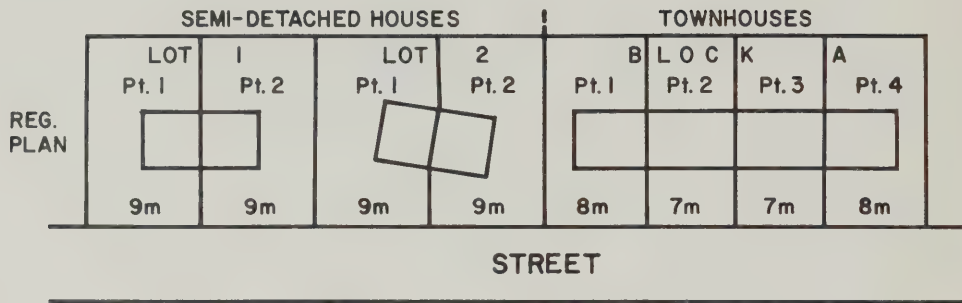


FIGURE 5

It is normal practice not to show individual semi-detached or row house lots in a registered plan of subdivision. Rather, lots of sufficient width for two semi-detached houses are usually shown. Similarly, row house lots are usually shown as one large block of land. This approach is used because of the difficulty the builder would have in ensuring that the common centre wall between two dwelling units was constructed exactly on a property line.

Once the foundation is constructed, however, the precise dividing line for the lots can be determined. Reference plans can then be prepared by an Ontario Land Surveyor to describe the property belonging to each unit.

By removing part lot control, the municipality would allow the sale of the individual semi-detached or townhouse lots without consent even though such lots would constitute only parts of lots or blocks on the registered plan. The reference plan description of the relevant part of the lot would be included in the deed which would be registered when the land was sold as part of the legal land transaction. When all properties had been sold and the deeds registered, the part lot control by-law could then be repealed. The new part lots could subsequently be resold provided that they were in separate ownership.

(iv) Servicing Easements

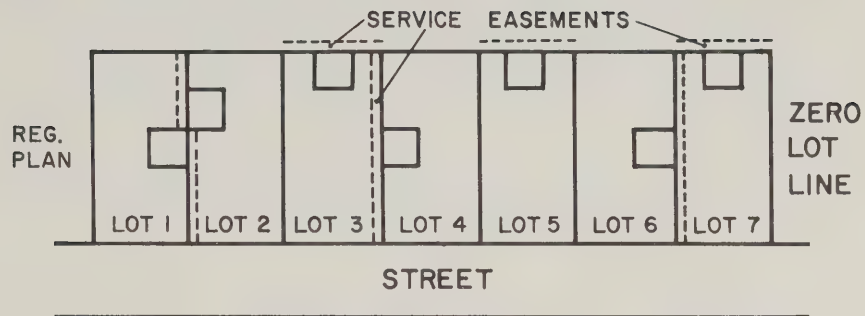


FIGURE 6

If a number of servicing easements are required for lots on a registered plan of subdivision, the most convenient way of granting those easements may be through removing part lot control.

The diagram above illustrates a zero lot line development where servicing easements must be granted to allow landowners to service the side of their house that is on the property line. Easements normally require consent under section 29 of The Planning Act. To grant these easements for a whole subdivision through a land division committee or a committee of adjustment would mean a large number of applications.

A more expeditious way of permitting such easements may be for the municipality to pass a by-law to remove part lot control. Once all necessary easements were registered, the municipality could repeal the by-law.

(v) Long Term Leases for Stores in Shopping Centre

As a final example, part lot control may be removed to permit the registration of leases with terms longer than 21 years for stores in a shopping centre which was located on a registered plan. Under section 29(4) of The Planning Act, consent would be required for such leases. As a result, if a large number of stores were involved, it may be more convenient to remove part lot control to allow the long term leases to be registered.

3.4 What is the Procedure for Passing Part Lot Control By-laws?

A by-law passed under section 29(5) of The Planning Act to remove part lot control does not come into force unless approved by the Minister of Housing or a delegated region. As well, section 29(10) requires registration of the by-law in the proper land registry office. The application to the Minister of Housing or the region should include the following:

1. A covering letter explaining the background to the request including the following information:
 - existing zoning
 - proposed use
 - type of access available to the property
 - other services available or required under the terms of the registered plan of subdivision.
2. A plan showing the properties in question and the proposed changes.
3. One original and two certified copies of the by-law.

In reviewing a request to approve a by-law removing part lot control, such matters as the following would be considered:

- the adequacy of the zoning controls;
- the adequacy of the access to the property and servicing;
- whether a more thorough review process should be undertaken because of the nature of the changes proposed; or
- whether a consent should be sought instead of a by-law to remove part lot control.

When the by-law is approved, the original and one certified copy are returned to the municipality for registration.

This by-law may subsequently be repealed by municipal council without the approval of the Ministry of Housing. When such a by-law is repealed, part lot control would again apply to the lands in question.

APPENDICES

APPENDIX A - TYPES OF REGISTERED PLANS

By-laws can only be passed under section 29 of The Planning Act to apply to registered plans of subdivision. This does not include all plans which may be registered under The Registry Act or The Land Titles Act.

1. Registered Plans within the meaning of The Planning Act

The plans which are generally considered as being registered plans of subdivision for the purposes of section 29 of The Planning Act are:

- a) All plans approved by the Minister or the Ontario Municipal Board since the first Planning Act in 1946 in accordance with section 33 of The Planning Act or a predecessor of that section.
- b) All plans which created new lots and were registered by the consent of a land registrar, a municipality, a judge or an inspector of legal offices. Almost all of these plans were registered prior to 1946 but there have been a few plans created since that date. These plans are no longer permitted by Regulation 780 of The Registry Act.

2. Compiled Plans

Compiled plans are not registered plans within the meaning of section 29 of The Planning Act. A compiled plan is a legal instrument used to describe the parcels of land that have been divided over the years by metes and bounds, often without measurement of the parcels created. Such plans do not create new lots but merely record what existed previously. Sometimes compiled plans will be made up of numerous registered plans, together with many individual properties previously described by metes and bounds, all compiled on the one plan for descriptive purposes.

There are various types of compiled plans depending on who ordered that the plan be put on.

- a) Judge's compiled plans - A judge may order that a plan be put on an area and he has the authority to allot the costs among the property owners, the municipality and the government department involved.
- b) Municipal compiled plans - A municipality may (because of assessment problems, etc.) order that a plan be put on. The plan would be signed by the reeve (mayor) and clerk and then registered. However, the municipality would have to pay all costs involved and this has tended to be prohibitive for small municipalities.

- c) Registrar's or inspector's compiled plans - The land registrar or inspector of legal offices may also order a plan be put on if it is necessary to clarify the records in the land registry office. A compiled plan has the advantage for record purposes that each lot on a registered plan is abstracted on a separate page rather than being included with all other transactions made within the lot and concession. This eases the searching of titles.

When a compiled plan is registered, it is given a registered plan number and the parcels are shown as lots. However, such compiled plans are not registered plans of subdivision within the provisions of section 29 of The Planning Act. (Elrick v Town of Hespeler, (1967)2.O.R.448). As a result, compiled plans are subject to the subdivision control provisions of section 29(2) of The Planning Act just like any other land which is not part of a registered plan of subdivision. Therefore, compiled plans are not affected by part lot control and cannot be deemed except for any part of a compiled plan which was an earlier registered plan.

There are several ways of distinguishing a compiled plan from a registered plan of subdivision. Some plans are given such titles as "Compiled Plan" or "Judge's Plan". Also, The Registry Act requires compiled plans to contain the caution that "This plan is not a plan of subdivision within the meaning of sections 29, 32 and 33 of The Planning Act".

Such plans may also contain a list of owners and original instrument numbers. In addition, the land registrar is required to enter, in red ink in the abstract, a caution that "section 29 of The Planning Act may continue to apply as though this plan had not been registered". If there is any uncertainty respecting the status of a plan, the local registrar of deeds should be consulted.

3. Reference Plans

Reference plans are not registered plans but only graphic descriptions which are deposited in the land registry office or recorded in the land titles office. They are given a plan number for identification and all parcels of land are shown as "parts" and not lots. A reference plan is now used to avoid having to use lengthy metes and bounds descriptions of land in a legal document. Instead the part and plan number may be used as the description. The Registry Act requires that the following be shown in a conspicuous position on a reference plan:

"CAUTION: This plan is not a plan of subdivision within the meaning of sections 29, 32 or 33 of The Planning Act."

Therefore subdivision control still applies as if the reference plan were not there and deeming or the removal of part lot control cannot apply.

APPENDIX B - SAMPLE DEEMING BY-LAW

THE CORPORATION OF THE _____
OF _____
BY-LAW. _____

A BY-LAW TO DEEM REGISTERED PLANS NOT TO BE REGISTERED

WHEREAS section 29 of The Planning Act, R.S.O. 1970, Chapter 349, authorized a municipality to designate any plan of subdivision or part thereof that has been registered for eight years or more as not being a plan of subdivision for subdivision control purposes;

AND WHEREAS it is deemed expedient in order to control adequately the development of land in the municipality that a by-law be passed pursuant to the said section 29;

NOW THEREFORE the Council of the Corporation
of the _____ of _____ enacts as follows:

1. The plans of subdivision or parts of plans of subdivision described as follows are hereby designated to be plans of subdivision or parts thereof which shall be deemed not to be registered plans of subdivision for the purpose of subsection 2 of section 29 of The Planning Act.
2. Lots _____ Registered Plan No. _____
Blocks _____ Registered Plan No. _____

ETC.

PASSED _____

REEVE

(Original signatures
and embossed seals)

CLERK

APPENDIX C - SAMPLE BY-LAW TO REMOVE PART LOT CONTROL

THE CORPORATION OF THE _____

BY-LAW NUMBER _____

A By-law to remove certain lands from
part lot control.

THE COUNCIL of the Corporation of the
....., pursuant to section 29, subsection (5) of The Planning Act,
R.S.O. 1970, Chapter 349, as amended ENACTS as follows:

1. Subsection 4 of section 29 of The Planning Act, R.S.O. 1970,
Chapter 349, does not apply to the registered plan or parts
thereof described as follows:

ALL AND SINGULAR those certain parcels or tracts of land and
premises situate, lying and being in the
.....and being composed of
Lots according to the
.....Plan registered in
the Registry Office for the Registry Division
of as Plan No.

ENACTED AND PASSED THISday of19..

(Original signatures
and embossed seals)

MAYOR

CLERK

